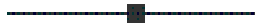


A Fresh Approach for a New Day



By Judge Steven Jahr, Director, Administrative Office of the Courts



Hon. Steven Jahr

I had been retired for three years after serving 22 years on the bench in Shasta County, when I received a phone call last summer asking about my interest in becoming the state's fifth director of the Administrative Office of the Courts (AOC).

During those three years, I had observed with dismay the growing criticism of the Judicial Council of California — created 87 years ago in the state's constitution as the policy-making body for California's judicial branch — along with its staff agency, the Administrative Office of the Courts.

Since the mid-1990's, the Judicial Council has been in the forefront of reform for our branch, sponsoring the landmark laws which transferred trial court operations funding from the counties to the state, and which unified the superior and municipal courts within each county to more efficiently deploy limited court resources. The Judicial Council succeeded in championing these reforms in the face of vigorous opposition. Had those reforms failed, the five-year recession with

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which we have been grappling would have been much more destructive of the courts' capacity to serve the public.

Under the council's leadership during that period, access for all Californians to their courts was improved by the creation of self-help centers for court users who increasingly represent themselves, by the development of a family law facilitator program, by the expansion of access to child support services in family courts, and by the adoption of more uniformity in the civil rules of court, ensuring that California attorneys who practice in multiple counties did not routinely encounter inconsistent procedures from county to county. The council fostered expansion of court interpreter programs statewide, and it placed significant emphasis on judicial and staff education and training to ensure equal access and fairness for all court users, regardless of gender or ethnicity. It was the council that brought reforms to the jury summoning process, reducing considerably the burden on our citizens.

But as I watched, those achievements were overshadowed by criticisms that the council and the AOC had become overly bureaucratic and non-responsive to the needs of the courts. I heard those criticisms even from colleagues in my former court, which had long supported the reforms and initiatives of the council.

But something else caught my attention as well.

It was the efforts of our new Chief Justice, Tani G. Cantil-Sakauye, who had assumed office at the very moment when the confluence of criticisms inflamed public discourse about our courts. She took the helm firmly and without hesitation, calling for a period of public self-assessment, and of reform.

It was the Chief Justice who formed the Strategic Evaluation Commission (SEC) to make a top-to-bottom assessment of the operations of the AOC. She appointed new advisory groups to oversee the courthouse construction and facilities maintenance programs and the troubled case management

program. And while the SEC process was ongoing, it was the Chief Justice who authorized the Interim Administrative Director of the AOC, Jody Patel, immediately to initiate reform processes, including downsizing the AOC from 1100 staff to 800, in order to meet crushing budget reductions.

So when I was asked to serve, I said yes, because I have a stake in all of this. Let me explain.

Before my wife and I moved from a Wilshire Boulevard law practice in Los Angeles to Redding in 1980, we had practiced in the courts in many Southern California counties. Then, in Northern California, I had the same kind of exposure to court functions and practices in several counties. From these experiences, both north and south, urban, suburban, and rural, I saw the sharp disparities in service between courts and in the access these largely isolated, uncoordinated institutions afforded the public we all serve.

When I was first appointed to the bench in 1986, I became involved in court administration at the local and state levels, serving as our superior court's presiding judge for four years and on the board and as vice-president of the California Judges Association. In the mid-1990's, former Chief Justices Malcolm Lucas and Ronald George appointed me to chair budget committees supporting a trial court funding reform movement that eventually led to state trial court funding. Later, I served a three-year term on the Judicial Council, chairing its Rules and Projects committee. My term ended in 2001, at which point I focused the balance of my career on assignments in my court's felony department, our drug court, our family department, and then concluded by a return to my civil assignment.

I have a stake in all this because I have seen, from the perspectives of law practice and judging, from north to south, rural to urban, how crucial to the individual effectiveness of each court the coordinated support and uniform policy-making role of the Judicial Council has proven to be.

The Judicial Council is a Representative Body

The Judicial Council's constitutional composition ensures that the broad range of viewpoints and experience in the branch are reflected, and its structure is designed to promote equivalent consideration of the needs of all the courts, regardless of where they are

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situated, so that access to justice for all citizens is uniform throughout the state.

California's Judicial Council structure can be contrasted with the dominant model throughout our country, in which a state's supreme court makes the statewide rules and sets the statewide policies. Whereas a state supreme court is composed of a small number of justices who do not necessarily have

trial court experience, our constitution requires that voting members of the Judicial Council include not only the Chief Justice, its chair, and one other supreme court justice, but three justices from the courts of appeal, and ten superior court judges. All are selected by the Chief Justice following a statewide application and vetting process. In addition, four attorney members are appointed by the State Bar Board of Governors, and one legislator is selected by each house of the Legislature. Importantly, court executives and others also sit as non-voting advisory members.

It is vital to understand that while the membership ensures that a breadth of experience and perspectives is brought to the table, the members must bring a statewide perspective. If they didn't, the council would quickly degenerate into a fragmented body and politicize the branch, disadvantaging citizens in jurisdictions whose courts could not successfully “compete” in such a forum.

Debates within the judicial branch about administration, especially when it involves the natural tension between local court autonomy and statewide uniformity in practices or policies, have been ongoing for decades. Not surprisingly, the expression of differing viewpoints on this topic became more pointed as the branch experienced disabling budget cuts over the past few years. Those different points of view are on full display at Judicial Council meetings these days, as I have observed. The Chief Justice makes sure about that.

Self-Assessment: Taking a Hard Look at Ourselves

One of the first things the Chief Justice did when she took office was to survey the judges around the state about the operations and effectiveness of the AOC. When I had served on the Judicial Council, it was my view — and still is — that the AOC is the staff agency to the Judicial Council and, as such, has the duty to provide customer service to the council, the courts, and ultimately the public.

But that was not the perception communicated to the Chief Justice. It prompted her to form the SEC. And when that committee provided its report to the Judicial Council more than a year later, some thought that the council would sweep the report under the proverbial rug. To the contrary, the report was published for all to see. Some predicted that the council would reject the report's 150 recommendations for reform. To the contrary, the council adopted almost all of them. And the Chief Justice promptly appointed as additional Judicial Council members three of the members of the SEC, including its chair and vice-chair.

The council, in adopting the recommendations, established directives to me, as director of the AOC, and timelines for completion. We in the AOC have developed a reporting process for regular updates to the council regarding our progress, which can be tracked at the California courts Web site. As of January 2013, roughly one-third of the directives have been fully implemented over what is expected to be an 18-month process, including the implementation of a complete overhaul of the executive management structure of the agency, which I firmly supported.

In addition, the council has provided for a review process so that our restructuring work and reporting can be independently verified by its members.

Fresh Leadership on the Judicial Council

In my new position, I have already participated in a handful of Judicial Council meetings and have witnessed the interaction and involvement of council members. The Chief's influence is plain. There is open and free discussion and debate.

And in keeping with her insistence on self-assessment and the reassertion of council responsibility for the work of the AOC, the members have established active oversight of AOC implementation of council policies.

These days, at each council business meet-

ing, public comment is permitted and encouraged.

The number of council meetings was increased from six to 12 in 2012. And the members are engaged. The significant demands on their time of their "day jobs" have not stopped them from preparing carefully to fully discharge their duties as council members.

At present, the council is in the midst of a first ever top-to-bottom assessment of all its advisory committees, task forces, and working groups established through the years to assist the council in its work, with a view to reorganizing and making more effective those groups, and placing oversight for their activities directly with the council.

California Court Case Management System

While no one disputed the need for improved case management systems within the trial courts, controversy arose over the statewide California Court Case Management System (CCMS) initiative.

I confess little first-hand knowledge of the development of CCMS, since it began after my term on the Judicial Council ended and was terminated by the Judicial Council months before I was hired as administrative director for the AOC.

I do know that the program was controversial in my former court. There was a sense that a distant authority was dictating the design and implementation of an unknown product, which would compel replacement of our local integrated case management system that had served our court and justice system stakeholders well for years, even as it was getting long in the tooth.

Late in the development, of CCMS, however, I attended a council-led regional demonstration of the capabilities of the final version of CCMS, known as V4, after my retirement. Afterwards, I learned that trial court representatives — judges and court personnel — were involved in the development of the system and that my former court's administra-

tive staff had come to embrace the prospect of its future deployment there.

Shortly after the Chief Justice took office, the State Auditor issued a report strongly criticizing CCMS and its costs. In response, the Chief Justice appointed a council committee, which included representatives of our

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trial courts, to oversee and bring the CCMS project to completion, which they did. But the die was cast. The projected initial costs of rolling out V4 into trial courts were much too high in the environment of the state’s fiscal crisis. The council voted to terminate deployment in the spring of 2012.

Fortunately, earlier versions of CCMS concerning the subjects of traffic (V2) and various civil case types (V3) had been deployed in trial courts, which were willing to serve as pilot program platforms. In fact, today fully 25% of civil cases are processed in California

using V3. The systems for those pilot courts, essential to their operations, are being fully supported by the AOC’s Information Technology Services Office. But new deployments have ended and the final comprehensive version of CCMS is mothballed.

Now the council, through its newly created internal technology committee, is working collaboratively with the courts to create a statewide business plan for case management technology to develop a process by which adequate state funding can be restarted to enable the organized replacement of aging, unsupported individual court systems. Judge Jim Herman of Santa Barbara Superior Court is heading up that effort.

— Courthouse Construction —

In 2002, responsibility for construction, maintenance and management of California’s trial court facilities became a state responsibility, delegated to the Judicial Council.

Since that program was developed, nine new court facilities have been designed and constructed, all on budget. Many more are in the design and land acquisition phases, although there has been a significant slowdown in progress as the Legislature and Governor have redirected construction revenue streams during the last three budget years to instead support court operations.

As soon as she took office, the Chief Justice took measures to put the council more directly in charge of the construction program. She appointed the Court Facilities Working Group — comprised of justices, judges, attorneys, architects, and other subject matter experts. Justice Brad Hill was installed as chair. The working group initiated an audit of the construction program by Pegasus Global Holdings, an international expert in construction programming. The audit called for specified improvements in the management of our construction program.

The working group, through a cost-reduction subcommittee, is conducting an exhaustive review of all planned projects. So far, the working group and council have identified

construction savings of about \$116 million.

In the meantime, I recommended that function and oversight would improve if the AOC's facilities division was split into two offices, one for construction projects, and one for maintenance and property management activities. The council adopted that recommendation.

The nature of court facilities requires provision of extensive security measures for the members of the public, as well as secure circulation and holding areas for prisoners. This means that the cost of constructing proper courthouses — like the cost of building hospitals — is considerable. With the experience obtained from construction of an initial generation of courthouses, the working group and the AOC are now also focusing on systematizing methods to compress the time and costs involved in preconstruction processes so that we can build future courthouses at a lower cost.

A separate working group, comprised of judges and court executives, has been established by the council to address the AOC's program for maintaining all existing courthouses in the state. That oversight activity has included an auditing process, which will soon be concluded, in keeping with the Chief's program of vigorous self-assessment and improvement.

— Moving the Branch Forward —

The Chief Justice has made it clear that she believes self-assessment is the duty of all public officials. She believes the branch is uniquely suited to exercise this duty because our core strength as a branch is to problem-solve, to collect the evidence, to assess the evidence with care and deliberation, and then to decide. I support her view whole-heartedly.

In addition to my responsibilities to implement the council directives flowing from the SEC recommendations, my duties include our most important issue: the budget for the judicial branch.

The cost to the taxpayers of running the entire judicial branch represents just 2.1% of

the state's budget. Increasingly, the budget for the courts has been supported by user filing fee increases and by growing fine penalty assessments. In fact, General Fund support for the courts has plummeted. Now only one penny out of every General Fund dollar goes to the courts. This means that we are slowly moving toward a user-funded court system — paid for by filing fees and fines. This trend has continued with little or no public policy debate over the wisdom of such an approach. No more.

The council, the Chief, and I are vigorously pursuing budget restoration and stability with the Governor and the Legislature. We are focused on coordinating with the State Bar and with the organized specialty bars and other stakeholders to ensure a unified, consistent, and reinforced message for restoration of budget dollars and to avoid the inconsistent and competing messages that were so harmful to the branch's budget advocacy last year.

At the same time, the task of developing a superior and defensible process for allocating budget dollars among the trial courts is being pursued by the Trial Court Funding Working Group, formed by the Governor and the Chief Justice to assess implementation of the Lockyer-Isenberg Trial Court Funding Act of 1997.

Clearly, the challenges for our branch are significant. But the will to address them openly and with fresh approaches is strong. As a former lawyer, a retired judge, and now a judicial administrator, I welcome this opportunity to work to enhance the administration of justice and to protect the constitutional right of all Californians to have their day in court. With the organized support of the bar, and the meaningful contributions of justices and judges, the Chief Justice and the Judicial Council will successfully meet the challenges ahead.

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Judge Steven Jahr has been the Director at the Administrative Office of the Courts since October 2012.